

875—110.6(88,89B) Trade secrets.

110.6(1) The chemical manufacturer, importer or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

- a. The claim that the information withheld is a trade secret can be supported;
- b. Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;
- c. The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and
- d. The specific chemical identity is made available to health professionals, employees, and designated representatives, in accordance with the applicable provisions of this rule.

110.6(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of subrules 110.6(3) and 110.6(4), as soon as circumstances permit.

110.6(3) In nonemergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under subrule 110.6(1), to a health professional (i.e., physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse), providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

- a. The request is in writing;
 - b. The request describes with reasonable detail one or more of the following occupational health needs for the information:
 - (1) To assess the hazards of the chemicals to which employees will be exposed;
 - (2) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
 - (3) To conduct preassignment or periodic medical surveillance of exposed employees;
 - (4) To provide medical treatment to exposed employees;
 - (5) To select or assess appropriate personal protective equipment for exposed employees;
 - (6) To design or assess engineering controls or other protective equipment for exposed employees;
- and
- (7) To conduct studies to determine the health effects of exposure.

c. The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in 110.6(3) “b”:

- (1) The properties and effects of the chemical;
- (2) Measures for controlling workers’ exposure to the chemical;
- (3) Methods of monitoring and analyzing worker exposure to the chemical; and
- (4) Methods of diagnosing and treating harmful exposures to the chemical;

d. The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

e. The health professional, and the employer or contractor of the services of the health professional (i.e., downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to the division, as provided in subrule 110.6(6), except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

110.6(4) The confidentiality agreement authorized by 110.6(3) “d”:

a. May restrict the use of the information to the health purposes indicated in the written statement of need;

b. May provide appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable preestimate of likely damages; and

c. May not include requirements for the posting of a penalty bond.

110.6(5) Nothing in 875—Chapters 110 and 120 is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.

110.6(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to the division, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, the disclosure.

110.6(7) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

a. Be provided to the health professional, employee, or designated representative, within 30 days of the request;

b. Be in writing;

c. Include evidence to support the claim that the specific chemical identity is a trade secret;

d. State the specific reasons why the request is being denied; and

e. Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

110.6(8) The health professional, employee, or designated representative whose request for information is denied under subrule 110.6(3) may refer the request and the written denial of the request to the division for consideration.

110.6(9) When a health professional, employee, or designated representative refers the denial to the division under subrule 110.6(8), the division shall consider the evidence to determine if:

a. The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

b. The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

c. The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

110.6(10) If the division determines that the specific chemical identity requested under subrule 110.6(3) is not a bona fide trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by the division.

If a chemical manufacturer, importer, or employer demonstrates to the division that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the commissioner may issue an order or impose additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to ensure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

110.6(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the appeal board in accordance with the enforcement scheme established in Iowa Code chapter 88 and the applicable appeal board rules. In accordance with appeal board rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the appeal board may review the citation and supporting documentation in camera or issue appropriate orders to protect the confidentiality of the matters.

110.6(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the commissioner any information which this rule requires

the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, the claim shall be made no later than at the time the information is provided to the commissioner so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

110.6(13) Nothing in this rule shall be construed as requiring disclosure under any circumstances of process or percentage of mixture information which is a trade secret.